

FILED

AUG 01 2013

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY                      DEPUTY CLERK

UNITED STATES OF AMERICA,

Petitioner,

v.

GARY JOLLY,

Respondent.

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CIVIL ACTION NO.

**W13CA235**

**PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS**

Petitioner, United States of America, on behalf of its agency the Internal Revenue Service (“IRS”), by and through its undersigned counsel, hereby respectfully represents as follows:

1. This Court has jurisdiction over the subject matter of this action and is empowered to issue appropriate process upon application by the United States pursuant to the provisions of 26 U.S.C. §§ 7402 and 7604, and 28 U.S.C. § 1345.

2. On April 4, 2013, under the authority of 26 U.S.C. § 7602, Internal Revenue Service summons (“Summons”) was severed to Gary Jolly (“Respondent”). The original and/or a true and correct copy of the Summons with Certificate of Service of Summons is attached hereto marked as **Exhibit A** and is incorporated herein by reference. The Summons was served upon Respondent as indicated in the Certificate of Service of Summons, as required by 26 U.S.C. §7603. An appropriate Affidavit and/or Declaration of the IRS Revenue Officer assigned to handle this matter is also attached hereto marked as **Exhibit B** and is incorporated herein by reference.

3. The Summons required Respondent to appear and give testimony relating to the tax liability and/or the collection of the tax liability for the periods designated and to bring and produce for examination by the IRS the items set out in the Summons to the IRS office shown on the Summons as the place for appearance.

4. The Respondent failed to appear at the time and place designated by the Summons and failed to produce the required items set out in the Summons.

5. The information sought by the IRS and not produced by Respondent in accordance with the Summons is either not in the possession of the IRS, or if in the possession of the IRS, is in a non-retrievable file system and/or is not readily accessible without undue administrative burden and expense.

WHEREFORE, Petitioner United States of America, respectfully requests that this Court enter an Order requiring the Respondent, Gary Jolly, to appear before the IRS Revenue Officer assigned to handle this matter at a date and hour to be determined by the Court to give testimony and produce for examination the aforementioned items set out in **Exhibit A**, and/or appear before this Court at a date and hour to be designated by the Court to show cause, if any Respondent can, why Respondent should not be directed by the Court to appear and produce the items set out in **Exhibit A** and to testify.

Respectfully submitted,

**ROBERT PITMAN**  
United States Attorney

By: 

**STEVEN B. BASS**

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ATTORNEY FOR PETITIONER  
UNITED STATES OF AMERICA



# Summons

In the matter of Gary Jolly 308 Audrey Ave Waco, TX 76705

Internal Revenue Service (Division): Small Business / Self Employed

Industry/Area (name or number): Small Business / Self Employed - Area 25

Periods: December 31, 2009, December 31, 2010, December 31, 2011 & December 31, 2012

## The Commissioner of Internal Revenue

To: Gary Jolly

At: 308 Audrey Ave Waco, TX 76705

You are hereby summoned and required to appear before F. STEWART, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

All documents and records in your possession or control reflecting the receipt of taxable income by you for the year(s) December 31, 2009, December 31, 2010, December 31, 2011 & December 31, 2012, including but not limited to: statement of wages for the year(s) December 31, 2009, December 31, 2010, December 31, 2011 & December 31, 2012, statements regarding interest or dividend income for the year(s) December 31, 2009, December 31, 2010, December 31, 2011 & December 31, 2012; employee earnings statements for the year(s) December 31, 2009, December 31, 2010, December 31, 2011 & December 31, 2012; records of deposits to bank accounts during the year(s) December 31, 2009, December 31, 2010, December 31, 2011 & December 31, 2012; and any and all other books, records, documents, and receipts regarding wages, salaries, tips, fees, commissions, and any other compensation for services (including gains from dealings in property, interest, rental, royalty and dividend income, alimony, annuities, income life insurance policies and endowment contracts, pensions, income from the discharge of indebtedness, distributive shares of partnership gross income, and income from an estate or trust), so that Federal Income Tax liability for the year(s) December 31, 2009, December 31, 2010, December 31, 2011 & December 31, 2012 (for which year(s) no return have been made) may be determined.

**Do not write in this space**

**Business address and telephone number of IRS officer before whom you are to appear:**

6801 SANGER AVE., SUITE 260, WACO, TX 76710-7818 - (254)741-2380 x242

**Place and time for appearance at** 6801 SANGER AVE., SUITE 260, WACO, TX 76710-7818



on the 3rd day of May, 2013 at 10:00 o'clock A m.

Department of the Treasury  
Internal Revenue Service

www.irs.gov

Issued under authority of the Internal Revenue Code this 3rd day of April, 2013

F. STEWART

Signature of Issuing Officer

REVENUE OFFICER

Title

Form 2039(Rev. 10-2010)  
Catalog Number 21405J

Signature of Approving Officer (if applicable)

Title

**Ex. A**

**Original -- to be kept by IRS**



# Service of Summons, Notice and Recordkeeper Certificates

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date

4/4/2013

Time

10:17

**How  
Summons  
Was  
Served**

1. ☐ I certify that I handed a copy of the summons, which contained the attestation required by § 7603, to the person to whom it was directed.
2. ☒ I certify that I left a copy of the summons, which contained the attestation required by § 7603, at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any): \_\_\_\_\_
3. ☐ I certify that I sent a copy of the summons, which contained the attestation required by § 7603, by certified or registered mail to the last known address of the person to whom it was directed, that person being a third-party recordkeeper within the meaning of § 7603(b). I sent the summons to the following address: \_\_\_\_\_

Signature

*[Handwritten Signature]*

Title

*Revenue Officer*

4. This certificate is made to show compliance with IRC Section 7609. This certificate does not apply to summonses served on any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine

whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Part D of Form 2039) to the person named below on the date and in the manner indicated.

Date of giving Notice: \_\_\_\_\_

Time: \_\_\_\_\_

Name of Noticee: \_\_\_\_\_

Address of Noticee (if mailed): \_\_\_\_\_

**How  
Notice  
Was  
Given**

- |   |  |
|---|--|
| <input type="checkbox"/> I gave notice by certified or registered mail to the last known address of the noticee.                                    | <input type="checkbox"/> I gave notice by handing it to the noticee.   |
| <input type="checkbox"/> I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any). | <input type="checkbox"/> In the absence of a last known address of the noticee, I left the notice with the person summonsed. |
|   | <input type="checkbox"/> No notice is required.  |

Signature

Title

I certify that the period prescribed for beginning a proceeding to quash this summons has expired and that no such proceeding was instituted or that the noticee consents to the examination.

Signature

Title



above on the respondent, Gary Jolly, by leaving a copy at last and usual place of abode, as evidenced in the certificate of service on the reverse side of the summons.

5 On 04/04/2013, I served the notice required by Section 7609(a) of Title 26, U.S.C., on Gary Jolly, by leaving a copy at last and usual place of abode, as evidenced in the certificate of service of notice on the reverse side of the summons.

6. On 05/03/2013, the respondent Gary Jolly, did not appear in response to summons. The respondent's refusal to comply with the summons continues to the date of this declaration.

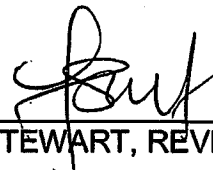
7. The books, papers, records, or other data sought by the summons are not already in the possession of the Internal Revenue Service.

8. All administrative steps required by the Internal Revenue Code for issuance of a summons have been taken.

9. It is necessary to obtain the testimony and to examine the books, papers, records, or other data sought by the summons in order to properly investigate the federal tax liability of GARY JOLLY for the calendar year(s) ended December 31, 2010, December 31, 2011 & December 31, 2012.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31<sup>st</sup> day of July, 2013.

  
F. STEWART, REVENUE OFFICER